

§ 710.30

by the Appeal Panel on the request until the inquiry or investigation is completed and its results available for review by the Appeal Panel. In such instances, the Principal Deputy Chief for Mission Support Operations, shall:

(1) Obtain written approval from the Secretary to defer review of the individual's case by the Appeal Panel for an initial interval not to exceed 90 calendar days;

(2) Advise the individual and appropriate DOE officials in writing of the initial deferral and the reason(s) therefor;

(3) Request that the individual's employment status not be affected during the initial and any subsequent deferral interval, except at the written request of the individual;

(4) Obtain written approval from the Secretary to extend the deferral for each subsequent 90 calendar day interval and advise in writing all concerned parties of the Secretary's approval;

(5) Inform in writing all concerned parties when the inquiry or investigation has been completed and the results made available to the Appeal Panel.

(i) If, upon receipt of a written request for review of an individual's case by the Appeal Panel, the Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security, is aware or subsequently becomes aware of information that adversely affects the individual's DOE access authorization eligibility and that cannot for national security reasons be disclosed in the proceedings before a DOE Hearing Officer, the Principal Deputy Chief for Mission Support Operations may refer the information and the administrative record to the Secretary for the final decision as to the individual's DOE access authorization eligibility. In such instances, the Principal Deputy Chief for Mission Support Operations shall notify in writing all concerned parties that the individual's case has been provided to the Secretary for a final decision in accordance with § 710.31.

(j) Upon the recommendation of the Appeal Panel, the Secretary may exercise the appeal authority of the Appeal Panel. If the Secretary exercises the

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appeal authority, then the decision of the Secretary is final.

[66 FR 47065, Sept. 11, 2001, as amended at 71 FR 68731, Nov. 28, 2006]

§ 710.30 New evidence.

(a) In the event of the discovery of new evidence relevant to the allegations contained in the notification letter prior to final decision of the individual's eligibility for access authorization, such evidence shall be submitted by the offering party to the Director, Office of Personnel Security, DOE Headquarters. DOE Counsel shall notify the individual of any new evidence submitted by DOE.

(b) The Director, Office of Personnel Security, DOE Headquarters, shall:

(1) Refer the matter to the Hearing Officer appointed in the individual's case if the Hearing Officer has not yet issued a decision. The Hearing Officer receiving the application for the presentation of new evidence shall determine the appropriate form in which any new evidence, and the other party's response, shall be received, e.g., by testimony before the Hearing Officer, by deposition or by affidavit.

(2) In those cases where the Hearing Officer's decision has been issued, the application for presentation of new evidence shall be referred to the Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security. In the event that the Principal Deputy Chief for Mission Support Operations, determines that the new evidence shall be received, he shall determine the form in which it, and the other party's response, shall be received.

(c) When new evidence submitted by either party is received into the record, the opposing party shall be afforded the opportunity to cross-examine the source of the new information or to submit a written response, unless the information is subject to the exceptions in § 710.26 (l) or (o).

[59 FR 35185, July 8, 1994. Redesignated and amended at 66 FR 47065, 47066, Sept. 11, 2001; 71 FR 68731, Nov. 28, 2006]

§ 710.31 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-